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21 December 1967

MEMORANDUM FOR: Assistant for Technical Development, NPIC

THROUGH : Chief, PD/OL

SUBJECT : Contract [REDACTED]

REFERENCES : (a) Contract [REDACTED]
(b) Amendment No. 01 to Contract [REDACTED]
(c) Memorandum NPIC/TSD/D-1150-67, dated 21 Nov 67

This is in answer to reference (c) and the paragraphs herein correspond to those in the memorandum.

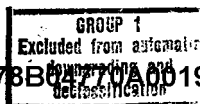
1. The contract, reference (a), was signed by [REDACTED] conditionally upon various changes (see copy of [REDACTED] letter attached). Amendment No. 01, reference (b), was issued after several discussions with the Contractor.

2. It was stated by [REDACTED] at the final contract negotiation that a Sales Order No. 2833-0000 for analytical work leading toward the development of a further refined rear projection viewer had been in effect for some months. The Negotiator attempted to have these costs charged to Independent Research and Development without success and the final understanding was that [REDACTED] would not charge these costs to IR&D, but would amortize these expenses to the first ten units of the NPIC viewer. The exact cost accrued to the Sales Order was not known at that time, but it should be understood that a Contractor can option to charge research and development costs to an approved IR&D program or to amortize the costs to future manufactured items resulting from the respective research and development. This specific problem was discussed by C/954, DC/954, and 954 Negotiator with C/PD by phone in October.

A warranty was requested by the COTR at the end of the final contract negotiation, and for no additional cost [REDACTED] agreed to a "standard warranty" to run for 90 days after acceptance of the viewer". The warranty was written by the negotiator and made a part of the contract without further contact with NPIC, however, [REDACTED] signed the contract on the condition that the warranty be "deleted and replaced with the attached Warranty Clause". [REDACTED] Senior Contract Administrator stated in a later discussion with the Negotiator, that the warranty supplied for insertion into the contract was basically [REDACTED] standard warranty used under similar circumstances. This warranty, except for one change, was made a part of the contract through Amendment No. 01.

3. The "cost summary" of the Government's share of this contract, after being modified during the first negotiation meeting, was as follows:

Declass Review by NGA.

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A. Nonrecurring Cost:

1. One (1) Unit
2. Nine (9) Units (Tooling)
3. Common to NOD-100 Share

Total nonrecurring

B. Recurring:

One (1) Unit

Plus 10% of nonrecurring cost

Total Government share of cost
for One Unit



25X

This amount of [] was established in the contract as the maximum cost to be absorbed by the Government under this contract.

During discussions between the Negotiator and the Contractor in attempting to resolve the exceptions taken to the original contract by the Contractor, it was learned they had decided not to make the tooling (Item No. A.2 above) during the production of this initial unit. The Government's share of the cost was therefore negotiated downward as follows:

A. Nonrecurring Cost

Common to NOD-100 share

Total Nonrecurring

B. Recurring Cost

One (1) Unit

Plus 10% of Nonrecurring cost

Total Government's share of
cost for One Unit.



25X

This reduction was applied to STEP III of the contract and the maximum cost was decreased accordingly by Contract Amendment No. 01.

With the above background, it is noted that of the [] (which is the total applicable developmental costs as outlined in paragraph 6 of reference (b)), the only amount new to the program is Sales Order No. 2833-0000 for [] (See paragraph 2 above for details). [] stated that Sales Order 2807-0001 for []

25X

25X

25X

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included in the nonrecurring costs of [] shown in the above "Cost Summary". The three remaining Sales Orders (Nos. 2807-0002, 3, and 5) amount to the [] nonrecurring cost common to NOD-100 (See above Cost Summary).

Your three questions at the end of paragraph 3 of reference (c) are commented on as follows:

A. Question - Why are the developmental costs so large?

It was not known at the time of the negotiation what the final amount of the Sales Order No. 2833-0000 would be, however, it is known that these costs are rear projection viewer costs; that they will be auditable relative to this Contract; and that they will be amortized over this Contract and future sales.

B. Question - Why are these developmental costs directly chargeable and partially recoverable under this Contract?

These costs are chargeable to this Contract and future sales of the viewer as nonrecurring developmental costs which the Contractor is entitled to recover. Reference (b) states "in no event shall the Contractor recover from all Government Contracts developmental costs in excess of those expended".

C. Question - What portion of these developmental costs will be allowed if the Contract is terminated prior to completion?

Under no circumstances will [] be paid in excess of the Government's maximum share for this Contract, which is [] including profit. Each STEP must be completed and accepted before payment is made thereunder (not withstanding Progress Payments under STEPS II and III). No more than 10% of the nonrecurring developmental costs will be allowed under this Contract. (This has been understood throughout the Contract but has been further clarified in Amendment No. 02 (See copy attached).

If at the conclusion of any of the three Contract STEPS, the performance under such STEP is not acceptable, the Government is not liable for any cost under that particular STEP, and the contract would be terminated at that point.

4. The Contract has been amended to include warranty of "design" and to delete "substantial" performance. Please remember that the warranty does not become effective until after the viewer is accepted by the Contracting Officer's Technical Representative. The acceptance is to be made in accordance with Deliverable Item 1 of STEP II which is a testing procedure to be submitted to the Contracting Officer's Technical Representative for mutual acceptance. Based on this COTR approved acceptance test procedure it should be determined if the viewer conforms to the applicable specifications. Such determination ordinarily would not be made during a warranty period. (See below).

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5. Paragraphs 7b and 7c do not conflict but, in fact, complement each other: Paragraph 7b of reference (b) states the warranty shall run for 90 days after the viewer is accepted. The length of time spent performing the final acceptance test is not stipulated in the warranty and is presumably covered in the acceptance test plan, however, 7c means that after the final acceptance tests are completed by COTR, he has 30 days in which to notify the Contractor of acceptance or nonacceptance. If no notice is issued within thirty days after the final acceptance tests, the Contractor will consider the item accepted. Thirty days does not seem restrictive, since if the tests do not satisfy the COTR that the item is acceptable, a nonacceptance notice can be given until the problem is corrected.

NPIC feels the paragraph 7b under reference (b) places a large burden of proof on NPIC concerning defective or nonconforming parts existing at time of delivery. Any parts found inadequate during the acceptance testing period and warranty period (to which paragraph 7e of reference (b) does not apply) must necessarily be considered to have been defective upon delivery. Since no [] personnel are likely to be on hand at destination, notice to Contractor of such defective part must be accepted as proof.

6. See paragraph 5 above.

7. Paragraph 7d of reference (b) has been amended to stop the running of the 90day warranty during periods in which the viewer is not fully operative due to repair or replacement action being performed by the Contractor. (See Amendment No. 02).

8. For clarity, paragraph 7e of reference (b) has been amended to include that the warranty does not extend to any item or part thereof which has been subject to misuse, neglect, or accident by or caused by the Sponsor.. (See Amendment No. 02).

9. The mention of the Implied Warranty of Merchantability has been deleted from paragraph 7f of reference (b). (See Amendment No. 02).

10. All action as recommended by reference (c) was fully discussed with the COTR on 2 and 6 of November 1967. The various points were soon thereafter discussed with [] by phone and he foresaw no problem in making the requested changes; however, final determination had to be made by [] Director of Contracts upon his return from a European business trip.

A letter dated 16 November 1967 was forwarded to [] setting forth the changes as requested. [] replied 6 December 1967 by letter stating "The Contract changes requested by your letter of 16 November have been reviewed and are acceptable to []"

Amendment No. 02, dated 15 December 1967, incorporated the necessary changes into Contract []

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COST SUMMARY

25X

Nonrecurring

1. One (1) Unit
2. Common to NOD-100 Share

Total Nonrecurring

Recurring

1. 10% of Total Nonrecurring
2. One (1) Unit

Total Recurring

6X1 Total Cost to

Total Job Costs

47.64% Less Government's Share

5X1 52.36% Share

Chief, WCPO/OL/PD

25X

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